

**In re: SAMRA PRODUCE AND FARMS, INC.
P.Q. Docket No. 01-0019.
Decision and Order.
Filed November 14, 2001.**

P.Q. – Untimely answer – Admission.

James D. Holt, for Complainant.
Respondent, Pro se.
Decision and Order issued by Jill S. Clifton, Administrative Law Judge.

The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture [herein the complainant], instituted this administrative proceeding under the Plant Quarantine Act of August 20, 1912, as amended (7 U.S.C. §§ 151-167), and the Federal Plant Pest Act, as amended (7 U.S.C. §§ 150aa-150jj) [herein the Acts]¹, the regulations promulgated thereunder (7 C.F.R. §319.56-5), and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-1.151) [herein the Rules of Practice], by filing a complaint on June 22, 2001.

The complaint alleges that on April, 3, 2000, the respondent imported approximately twenty-five (25) cases of Hyacinth beans from the Dominican Republic into the United States at Jamaica, New York, in violation of 7 C.F.R. § 319.56-5, because the respondent did not provide notice of the importation of each case of Hyacinth beans, as required.

The Hearing Clerk, Office of Administrative Law Judges, [herein Hearing Clerk] mailed the complaint to the respondent by certified mail on June 25, 2001. Respondent has not filed an answer to date. The failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139.

On September 13, 2001, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), complainant filed a proposed decision, along with a motion for the adoption thereof, both which were served upon the respondent by the Hearing Clerk. There having been no meritorious objections filed, the material allegations alleged in the complaint are adopted and set forth herein as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. 7 C.F.R. § 1.139.

Finding of Fact

¹I note that while section 438(a) of the Plant Protection Act, enacted on June 20, 2000, repealed the Act of August 20, 1912 (commonly known as the “Plant Quarantine Act:(7 U.S.C. 151-164a, 167) and the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*, 7 U.S.C. 147a note), section 438(c) of that Act states that “Regulations issued under the authority of a provision of law repealed by subsection (a) shall remain in effect until such time as the Secretary issues a regulation under section 434 [Regulations and Orders] that supersedes the earlier regulation.”

1. The mailing address of Samra Produce and Farms, Inc. is 706 Market Court, Los Angeles, California 90021.

2. On April, 3, 2000, respondent, at Jamaica, New York, imported twenty-five (25) cases of Hyacinth beans from the Dominican Republic into the United States without providing notice of the importation.

Conclusion

It is a well established policy that "the sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose." *S.S. Farms Linn County, Inc.*, 50 Agric. Dec. 476 (1991).

The success or failure of the programs designed to protect America's agriculture by the prevention, control and eradication of animal diseases and plant pests is dependent upon the compliance of individuals such as the respondent. Without the adherence of these individuals to Federal regulations concerned with the prevention of the spread of animal diseases and plant pests, the risk of the undetected introduction and spread of animal diseases and plant pests is greatly increased. The sanctions must be substantial enough to be meaningful. This is important not only to insure that a particular respondent will not again violate the regulations, but that the sanction will also deter others in similar situations. These proceedings address three violations of the Acts. A single violation of the Acts could cause losses of billions of dollars and eradication expenses of tens of millions of dollars. This suggests the need for a severe sanction to serve as an effective deterrent to violations.

Complainant believes that compliance and deterrence can now be achieved only with the imposition of the one thousand dollar (\$1,000.00) civil penalty requested. Complainant's recommendation "as to the appropriate sanction is entitled to great weight, in view of the experience gained by the [Complainant] during [his] day-to-day supervision of the regulated industry." *In re: S.S. Farms Linn County, Inc. et al.*, 50 Agric. Dec. 476 (1991).

Complainant also seeks as a primary goal the deterrence of other persons similarly situated to the respondent. *In re: Indiana Slaughtering Co.*, 35 Agric. Dec. 1822, 1831 (1976). "The civil penalties imposed by the Secretary for violations of his quarantine regulations should be sufficiently large to serve as an effective deterrent not only to the respondent but also to other potential violators." *In re Kaplinsky*, 47 Agric. Dec. 629 (1988). Furthermore, "if the person cannot pay the penalty imposed, arrangements can be made to pay the civil penalty over a period of time." *Id.* at 633.

Under USDA's sanction policy "great weight is given to the recommendation of

the officials charged with the responsibility for administering the regulatory program." *In re Spencer Livestock Commission Co.*, 46 Agric. Dec. 268, 447, *aff'd*, 841 F.2d 1451 (9th Cir. 1988). "In order to achieve the congressional purpose and to prevent the importation into the United States of items that could be disastrous to the United States agricultural community, it is necessary to take a hard-nosed approach and hold violators responsible for any violation irrespective of lack of evil motive or intent to violate the quarantine laws." *In re Capistrano*, 45 Agric. Dec. 2196, 2198 (1986). *Accord, In re Vallata*, 45 Agric. Dec. 1421 (1986).

Therefore, by reason of the facts contained in the Findings of Fact above, I find that the respondent has violated the Acts and the regulation promulgated pursuant to those regulations (7 C.F.R. § 319.56-5).

Therefore, the following Order is issued.

Order

Samra Produce and Farms, Inc. is hereby assessed a civil penalty of one thousand hundred dollars (\$1,000.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded to:

United States Department of Agriculture
APHIS
Accounts Receivable
P.O. Box 3334
Minneapolis, Minnesota 55403

within thirty (30) days from the effective date of this Order. The certified check or money order should include the docket number of this proceeding.

This Order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Decision and Order upon the respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the rules of practice applicable to this proceeding (7 C.F.R. § 1.145).

[This Decision and Order became final December 26, 2001.-Editor]
